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No. 94-2074

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

KONIAG, INC.

Petitioner,

v.

OMAR STRATMAN, *et al.*

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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12 pp

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BRIEF FOR THE PETITIONER, KONIAG, INC. IN REPLY TO FEDERAL RESPONDENT'S OPPOSITION

On two occasions, the Ninth Circuit Court of Appeals has erroneously ruled against Petitioner Koniag, Inc. The federal respondent in opposition agrees with Koniag, Inc. on this account. Brief for the Federal

Respondent in Opposition (Opposition), pp. 9-12. Nevertheless, the federal respondent contends that review by this Court is not warranted "because the case is in an interlocutory posture as a result of the court of appeals' remand to the district court for further proceedings and because the errors in the decision below are limited in their effects." Opposition, pp. 9-10. Koniag believes, however, that despite the interlocutory posture of this case, review by this Court is warranted.

ARGUMENT

As a general rule, this Court does not review cases in an interlocutory posture. However, the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1) is not limited to final judgments, and in the appropriate circumstances, this Court has reviewed interlocutory orders from the courts of appeals. *See, e.g.*, *Estelle v. Gamble*, 429 U.S. 97, 98 (1976); *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682, 685 & n.3 (1949); *Land v. Dollar*, 330 U.S. 731, 734 & n.2 (1947). For example, this Court has granted certiorari when the issue sought to be reviewed was "fundamental to the further conduct

of the case." *Larson*, 337 U.S. at 685 n.3 (quoting *Land*, 330 U.S. at 734 n.2). In the instant case, the issues raised by Koniag, Inc. are fundamental to the further conduct of the case. If this Court decides in Koniag, Inc.'s favor on any one of these issues, this case must be dismissed. Therefore, Koniag, Inc. contends that review by this Court is warranted notwithstanding the interlocutory posture of this case.

Furthermore, the federal respondent understates the potential effect of the Ninth Circuit's rulings. The first issue raised by Koniag, Inc. is whether the Ninth Circuit erroneously granted relief from judgment pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure. Petition, pp. 12-17. This Court has on numerous occasions granted certiorari to determine the proper construction of the federal rules of civil and criminal procedure. *See, e.g.*, *Ackermann v. United States*, 340 U.S. 193, 198-200 (1950) (discussing Rule 60(b)(6)); *Hickman v. Taylor*, 329 U.S. 495 (1947); *Upshaw v. United States*, 335 U.S. 410 (1948); *Southern Construction Co. v. Pickard*, 371 U.S. 57, 60 (1962);

Schlagenhauf v. Holder, 379 U.S. 104, 109 (1964). The instant case presents an opportunity for this Court to place significant limitations on the relief available under Rule 60(b)(6). Specifically, Koniag, Inc. requests that this Court find that "mistake," at least in itself, is not a sufficient reason to grant a Rule 60(b)(6) motion. Petition, p. 13. In addition, the Ninth Circuit's 1994 ruling raises important "Full Faith and Credit" issues. Petition, p. 16. Accordingly, Koniag, Inc. has argued that Rule 60(b)(6) should not be construed to allow a party to collaterally attack a state court judgment.[1] Petition, p. 17. Therefore, although this case contains some "unusual factual circumstances," *see* Opposition, p. 11, it presents an opportunity for this Court to address legal principles and rules of potentially broad application.

The Ninth Circuit's 1981 ruling also presents several important legal issues concerning due process and standing. Petition, pp. 17-30. Nevertheless,

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[1] Alternatively, the Court may adopt the analysis set forth in *Stipelcovich v. Sand Dollar Marine, Inc.*, 805 F.2d 599 (5th Cir. 1986). *See* Petition, p. 14.

the federal respondent contends that even if "the court of appeals' erroneous ruling would have merited the Court's review in 1981,...it does not merit review now." Opposition, p. 12. The federal respondent notes that all village eligibility cases have been resolved except for this one. *Id.* This is true, but largely irrelevant. The Ninth Circuit's 1981 ruling is significant because it may affect the finality of the administrative eligibility determinations by subjecting them to collateral attack by third parties who hold similar interests in land. This was the argument presented by the federal defendant when it moved for relief from the district court's 1976 order. Appendix J to Petition, pp. 47a-48a.

Moreover, even if the Ninth Circuit's 1981 ruling does not affect village eligibility cases specifically, it could have an effect beyond the context of ANCSA. Clearly, the cases cited by Koniag, Inc. on pages 17-23 of its petition show that the due process issues raised by Koniag, Inc. have a general relevance to land management and regulation. In addition, Koniag, Inc.'s discussion on pages 27-30 raises issues which, if decided

in Koniag, Inc.'s favor, could place significant limitations on "recreational interest" standing.[2]

Finally, even if this case has limited precedential significance, it is, nevertheless, important to the administration of ANCSA.[3] It will affect ANCSA corporations throughout the state and affect the nature of the settlement agreement generally.[4] For example, the decertification of Leisnoi, Inc. may entail a complete reallocation of land and benefits between the various ANCSA villages and regional corporations. *See* 43 U.S.C. §§ 1605, 1610. Decertification may also affect the massive land exchange which was accomplished through section 1427 of the Alaska National Interest Lands

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2 The Ninth Circuit's 1981 ruling has been cited in Wright, Miller & Cooper, 13 Federal Practice and Procedure §§ 3531.7 n.37, 3531.8 n.5 (2d ed. 1984) for the proposition that recreational users of land have standing.

3 On several occasions, this Court has granted certiorari to resolve an issue which is important to Native American affairs. *See, e.g., Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351, 353-54 (1962); *Northwestern Bands v. United States*, 324 U.S. 335, 337 (1945).

4 The settlement provides for the distribution of some forty million acres of federal land and $962,500,000 to Alaska Natives. Petition, p.4.

Conservation Act. Whatever the final outcome, there will undoubtedly be post-decertification litigation, and this is contrary to Congress' express declaration of policy that the settlement be accomplished rapidly and without litigation. 43 U.S.C. § 1601(b).

CONCLUSION

The Ninth Circuit has erroneously ruled against Koniag, Inc. and Leisnoi, Inc. on two occasions. Opposition, p. 9. Koniag, Inc. has no other avenue to correct these errors and remedy this injustice. Therefore, Koniag, Inc. respectfully requests this Court to grant Koniag, Inc.'s petition for a writ of certiorari.

Respectfully submitted,

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